IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.7284 OF 2004

Shri Dattatray Omkar Patil Petitioner

Vs.

Divisional Controller & ors. Respondents

Mr.M.S.Karnik for petitioner.

CORAM: B.H.MARLAPALLE,J.
June 16, 2005.

ORAL ORDER:

1. Heard the learned counsel for the petitioner who was employed as a conductor under the Respondent-Corporation, a State Undertaking. While he was on duty on 20-9-1998 on Nashik-Jalgaon route his bus was checked at Dhule and it was noticed that he had issued the tickets which were already used. He was charge-sheeted on 27-10-1998 for re-selling of tickets to the passengers. A domestic enquiry was ordered and the Enquiry Officer held him guilty of the charges levelled against him. Consequently he was awarded the punishment of dismissal from service vide order dated 26-8-2000. He, therefore, approached the Labour Court in Complaint (ULP) No.274 of 2000. He did not dispute the fairness of the enquiry and the Labour Court on assessment of the

evidence held that the findings recorded by the Enquiry Officer were proper and they did not suffer from any perversity. The Labour Court also held that the charge of victimization as contended by the complainant was also not proved. The Labour Court noted that earlier the petitioner was dismissed from service for similar conduct and he had raised industrial dispute against the said order of dismissal. The reference was rejected and the petitioner had approached this Court. He had succeeded before this Court and was directed to be reinstated. On such background of service record the Labour Court held that the allegations of unfair labour practice under any of the clauses of Item 1 of Schedule IV of the MRTU & PULP Act, 1971 were not proved.

2. However, the Labour Court noted that though the complaint was required to be dismissed, the petitioner had retired on reaching the age of superannuation during the pendency of the complaint and, therefore, it thought it fit to mould the relief so as to enable the petitioner-complainant to get retirement benefits presuming that his retired on reaching the age of superannuation. The operative of

the order dated 1-8-2003 passed by the Labour Court while rejecting the complaint reads as under:

> "As the complaint has failed to prove the Respondents committed any unfair labour practice in dismissing him, the complaint is hereby dismissed. However, taking a lenient view of the matter, the order of dismissal dated 26-8-2000 issued to the complainant is hereby converted into termination so as to enable the complainant to get the retiremental dues/benefits presuming that his services were terminated on reaching the age of superannuation."

3. The respondent-employer challenged the order dated 1-8-2003 to the extent of moulding the relief by filing Revision (ULP) No.45 of 2003 and the learned Member of the Industrial Court at Nashik was pleased to allow the Revision Application by the impugned judgment and order dated 9-7-2004. The Industrial Court noted that once the Labour Court had recorded the finding that the employer did not indulge in any act of unfair labour practice and the complaint was dismissed, it did not have the powers

to grant any further relief under the scheme of Section 30(1) of the said Act in a complaint filed under Section 28 of that Act. The Labour Court had relied upon the decision of this Court in the case of P.K. Wani v. Divisional Controller, Dhule and the Industrial Court noted that the said decision was not applicable to the facts of the present case for the simple reason that the Labour Court in P.K.Wani's case had recorded a finding that the complaint of unfair labour practice was partly proved and in the said Court this Court only expected the employer to consider the issue of retiral benefits even though the petition was not entertained. The following observations would indicate that the Labour Court could not have moulded the relief as has been done in the instant case:

> "I am informed by Mr.Kochar that because the petitioner had been dismissed from service for an act of misconduct involving dishonesty in connection with the Employer's business or property it is likely that the payment of gratuity payable to him under the provisions of Payment of Gratuity Act may be refused and, if it is done, it would be extremely harsh

upon the petitioner employee. Though I am not inclined to disturb the order of the Industrial Court, I would recommend to the First Respondent to show some mercy to the Petitioner and find a way to paying him at least his earned gratuity for a period of the service."

4. It was under these circumstances that the Industrial Court held that the Labour Court was in manifest error to grant relief once the complaint was dismissed and interfered with the same while exercising powers of revision under Section 44 of the Act. The reasoning given by the Industrial Court is fully justified and the view taken by the Industrial Court is required to be upheld.

5. Under the premises there is no case to interfere with the order passed by the Industrial Court, by exercising the powers of superintendence under Article 227 of the Constitution. Hence the petition is rejected summarily. In case the petitioner approaches the Respondent-Corporation with a request to consider his case for payment of retiral benefits taking into consideration that he was

dismissed from service towards the fag end of his career, the said representation be considered by the employer sympathetically and in keeping with its rules.

(B.H.MARLAPALLE,J.)